

REMARKS

It is now believed that the application is in condition for allowance after entry of the above amendment to the application claims. All rejections and objections have been addressed by the amendment or made moot. Further favorable action by way of entry of a Notice of Allowance is respectfully solicited.

Amendments to the Specification Text and Drawings

No amendments to the specification text or drawings are presented in this paper.

Status of Claims and Amendments to the Claims

Claims 1, 3, 5, 6, 10, 13, 16, 17, 20, 24, 25, 26, and 28-38 have been cancelled in this paper. The applicants reserve all rights to continue prosecution of the cancelled subject matter and any other subject matter supported by the application in one or more subsequently filed applications.

Newly presented independent claims 39-41 replace all prior independent claims. Claim 39 is directed to a method for operating an ODK subsystem in a control automation system. Claim 40 is directed to a control automation system having an ODK subsystem. Claim 41 is directed to a computer storage medium having software that when run on a processor of a control automation system practices a method for operating an ODK subsystem.

Claims 2, 4, 7, 8, 11 and 14 were amended in this paper to recite dependency on newly presented method claim 39. Similarly, claims were amended to recite dependency on newly presented system claim 40. Formality corrections were made to one or more of the dependent claims.

Claims 9, 12, 15 and 23 were not changed in this paper.

Interview Summary

Applicants thank the Examiner for the courtesies extended to their attorney, Peter A. Luccarelli Jr., Reg. No. 29750, during a telephonic interview on December 23, 2008, in which the Examiner clarified her prior indication of allowable subject matter of claims set forth in

paragraph 62 of the present Office Action. The Examiner indicated that independent method, systems and software stored on computer storage medium independent claims would be allowable provided that they incorporated the subject matter of all of the claims identified in paragraph 62, namely: the combined subject matter of claims 6, 10, 13 and claim 17, lines 4-6 and lines 12-13, if combined in their entirety and rewritten in independent form including all of the limitations of the base claim and any intervening claims. There were no discussions of any proposed revised claims, the cited art or any of the grounds for rejection. Mr. Luccarelli proffered to have attorneys for the Applicants submit an amendment to incorporate the claim revisions suggested by the examiner, in view of the final rejection status of the present application.

In response to the proffer to submit amended claims, new independent claims 39 (method), 40 (system) and 41 (software) are presented herein that incorporate all subject matter indicated as being allowable by the Examiner in paragraph 62 of the outstanding Office Action. All remaining dependent claims have been amended to be dependent on one of the new independent claims 39-41 directly or through an intervening claim. Further favorable action in the nature of entry of a Notice of Allowance is believed to be warranted.

Claim Rejections Under 35 USC §112

In paragraphs 1-8 of the outstanding Office Action all pending claims 1-38 were rejected under §112, second paragraph, as allegedly being indefinite for failing to point and distinctly claim the subject matter of the invention. The functional relationships between the open development kit (ODK) subsystem, applications and the hardware have been clarified in the newly presented independent claims 39-41. It is believed that the newly presented claims, combined with claim cancellations above, have rendered the §112, second paragraph rejections moot. Allowance of all remaining pending claims is respectfully solicited.

Claim Rejections Under 35 USC §101

Former claim 38, directed to software used to practice the present invention was rejected for failure to claim statutory subject matter. In response, claim 38 was cancelled and new claim 41 was presented herein. New claim 41 recites in the preamble: "computer storage medium

storing a computer program adapted for use in a control automation system computer” in conformity with USPTO policy guidelines regarding computer software implementations of inventions. Allowance of new claim 41 is respectfully solicited.

Claim Rejections Under 35 USC §103

Paragraphs 8-60 of the outstanding Office Action rejected all of claims 1-38. As discussed above, the Examiner did indicate in paragraph 62 of the outstanding Office Action that the combined subject matter of claims 6, 10, 13 and claim 17, lines 4-6 and lines 12-13 would be allowable if combined in their entirety and rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response and in view of the final rejection status of the present application, the newly presented independent claims 39-41 were drafted to include the subject matter of the allowable claims, as well as the base and intervening claims. All remaining dependent claims in the application are dependent on the newly presented independent claims, directly or through intervening claims.

In view of the amendments and cancellation of the remainder of previously rejected claims 1-38, it is now submitted that the outstanding rejections under §103 are now moot. Further favorable action by allowance of all remaining claims and issuance of a Notice of Allowance is respectfully solicited.

Applicants reserve all rights to pursue further prosecution of the subject matter of all cancelled claims as well as any other subject matter supported by the present application specification in one or more continuation applications as allowed by the USPTO Rules of Practice. Cancellation of claims in this application should not be construed as any form of admission against interest respecting continuing prosecution of any claimed subject matter in future continuation applications.

Conclusion


Thus, the Applicants submit that none of the claims presently in the application is directed to unpatentable subject matter under the provisions of 35 USC §101. Applicants also submit that the claims presently in the application are in compliance with the provisions of 35 USC §112. Applicants moreover submit that none of the claims presently in the application

would have been obvious under the provisions of 35 USC § 103 based on the references cited by the Examiner.

Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

Respectfully submitted,

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